

May 23, 2000

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The Honorable Fred Thompson
United States Senate
Washington, D.C. 20510

Dear Senator Thompson:

I am responding to your letter of April 17, 2000, on behalf of your constituent, Mr. [REDACTED], who has a flexible spending arrangement (FSA) from which he receives reimbursements for medical expenses. Although he apparently received reimbursement from his FSA for the cost of natural vitamins obtained by prescription, Mr. [REDACTED] believes FSAs are incorrectly declining to make reimbursements for vitamins and natural medicines.

The Congress amended § 213 of the Internal Revenue Code by limiting the deduction for medicines and drugs in § 202(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (Act), 1982-2 C.B. 470, to provide that:

- An amount paid for a medicine or drug is a medical expense only if the medicine or drug is a "prescribed drug" or insulin.
- The term "prescribed drug" means a drug or biological which requires a prescription of a physician for its use by an individual.

This means that the expense of a medicine that is prescribed by a physician, but which does not require a physician's prescription (such as aspirin), does not qualify as a medical expense. Since only medical expenses as defined in § 213 qualify for reimbursement by a FSA, a medicine or drug not requiring a prescription (other than insulin) does not meet the standard for reimbursement.

The relevant committee reports for the Act do not explain the reason for the Congress' action in so limiting the medical expense deduction for drugs and medicines. However, the General Explanation of the Revenue Provisions of the Act, prepared by the staff of the Joint Committee on Taxation, states at pages 24-25 that the Congress decided to eliminate the deduction for non-prescription drugs (other than insulin) to simplify the deduction, conform its coverage more closely to the coverage of private health insurance policies, and because expenses for non-prescription drugs are more likely to represent expenses for ordinary consumption than extraordinary medical costs that should be deductible.

IRS publications, like Publication 502, *Medical and Dental Expenses*, to which Mr. [REDACTED] referred, provide general guidance to assist taxpayers in understanding and meeting their tax responsibilities. Publication 502 reflects the law as enacted by the Congress:

You can include in medical expenses amounts you pay for prescribed medicines and drugs. A prescribed drug is one that requires a prescription for its use by an individual (emphasis added). You can also include amounts you pay for insulin. Except for insulin, you cannot include in medical expenses amounts you pay for a drug that is not prescribed.

I hope this information is helpful in explaining why only drugs or medicines requiring a physician's prescription qualify as medical expenses and for reimbursement under a FSA. If you have any questions, please call me at (202) 622-4500, or call John Sapienza at (202) 622-4920.

Sincerely,

Heather C. Maloy
Deputy Associate Chief Counsel
(Domestic Technical)